IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

SUMMONS FOR JUDGMENT NO.88 OF 2006

IN

SUIT NO.3439 OF 2005

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Pan India Network Infravest
Pvt.Ltd. ...Plaintiffs

v/s.

Thakoor Electro Mechanical
Pvt.Ltd. ...Defendant

...

Mr.Naushad Engineer i/b RMG Law Associates for the Plaintiffs.
None for the Defendant.

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CORAM: D.K.DESHMUKH, J.

DATED: 19TH JUNE, 2006

P.C.:

1. Though the Defendant has not filed any application for leave to defend, it appears from the record that the Plaintiffs are relying on an agreement of licence for refund of licence fees. According to agreement, it is clear that the Defendant was to refund the licence fees on the Plaintiffs vacating the premises. The Plaintiffs issued notice to the Defendant informing him that they are willing to vacate the premises by 31st December, 2004. Nowhere in the plaint a positive statement has been made as to on what date possession was handed over by the Plaintiffs to the Defendant.

2. For a right to accrue in favour of the Plaintiffs for refund of the security deposit in terms of the agreement, the Plaintiffs will have to show either that actual possession was handed over to the Defendant on 31st December, 2004 or that it was

offered to the Defendant on that date, but the Defendant did not take it. In the absence of necessary pleadings, therefore, in my opinion, it will be hazardous to pass a decree in the summary jurisdiction in favour of the Plaintiffs. Summons for judgment is,therefore, disposed of. Defendant is, therefore, granted unconditional leave to defend the suit. Suit be transferred to commercial cause list. Written statement to be filed within eight weeks from today.

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